

The Administrative Law Judge denied claimant's request for benefits and found the claimant failed to provide timely notice. The claimant requests the Appeals Board review that preliminary finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

Claimant provided timely notice of her accidental injury. The preliminary finding of the Administrative Law Judge to the contrary is reversed.

K.S.A. 44-520 sets forth the general rule and requires an injured worker to inform the employer of a work-related accident within ten (10) days of the occurrence. Claimant fulfilled her obligation under this statute.

Claimant injured her back moving barrels of ink on Saturday, November 6, 1993. Claimant did not immediately report the back pain to her employer because she had experienced similar pains which resolved. However, this time claimant's symptoms increased over the next several days.

It is more probably true than not claimant gave respondent proper notice of her accidental injury within ten (10) days of its occurrence. During the week following her injury, claimant telephoned respondent several times and spoke with one of her supervisors, John Thoele, and respondent's personnel department regarding, among other matters, her need to see a physician for her back, her subsequent hospitalization, and the necessity to complete insurance claim forms. Claimant's physician hospitalized her from Wednesday, November 10, to Friday, November 12, 1993. On Monday following her release, November 15, 1993, claimant presented to the personnel department an insurance claims form that indicated claimant's diagnosis was chronic lumbar back pain and that her disability was due to an accident that occurred at work. Because she did not report the injury before the end of her shift on the day it occurred, the personnel department told claimant that in order to receive benefits she would have to alter the claims form and indicate her disability did not occur at work. During the period immediately following her injury, claimant consistently told her physicians and other health care providers she injured her back at work while moving barrels of ink. Claimant's testimony is credible and persuasive.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant has established she provided timely notice of accident, and, therefore, the preliminary finding of the Administrative Law Judge to the contrary should be, and hereby is, reversed. The Appeals Board further orders this case remanded to the Administrative Law Judge for appropriate findings and order based on the evidence introduced to date regarding any other issues pertaining to claimant's request for benefits.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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